A

YAP KIM HIN & ANOR v. CHUA BOON HOCK & ORS

FEDERAL COURT, PUTRAJAYA
TENGKU MAIMUN TUAN MAT CJ
ABANG ISKANDAR PCA
HASNAH MOHAMMED HASHIM FCJ
B [CIVIL APPEAL NOS: 02(i)-51-09-2023 (W)
& 02(i)-52-09-2023 (W)]
6 JANUARY 2025

C **Abstract** – *It is trite law that once an order/judgment has been perfected, the court ought not to reopen or alter its effect unless it falls under the slip rule. The sanctity of a court order must be respected and observed at all times, until it is validly set aside.*

D ***CIVIL PROCEDURE:*** *Judgments and orders – Orders made by courts – Court of Appeal ordered parties to be added in High Court proceedings – Joinder application filed together with affidavits not affirmed before Commissioner for Oaths – Whether joinder application flawed due to absence of valid affidavit in support – High Court made consequential order and directed parties be granted liberty to refile joinder application – Whether High Court could disregard Court of Appeal order – Whether*
E *Court of Appeal functus officio – Whether Court of Appeal acted in excess of jurisdiction when granting consequential order despite previous order – Whether such act tantamount to revisiting or reopening matter that had been finalised*

F ***CIVIL PROCEDURE:*** *Proceedings – Orders made by courts – Court of Appeal ordered parties to be added in High Court proceedings – Joinder application filed together with affidavits not affirmed before Commissioner for Oaths – Whether joinder application flawed due to absence of valid affidavit in support – High Court made consequential order and directed parties be granted liberty to refile joinder application – Whether High Court could disregard Court of Appeal order – Whether*
G *Court of Appeal functus officio – Whether Court of Appeal acted in excess of jurisdiction when granting consequential order despite previous order – Whether such act tantamount to revisiting or reopening matter that had been finalised*

CIVIL PROCEDURE: *Joinder application – Validity – Whether supported by proper affidavit in support – Whether there was breach of mandatory requirements*
H *to formally attest affidavit – Whether joinder application flawed – Whether suit ought to be struck off*

These were the appeals by the appellants against the decision of the Court of Appeal ('COA') which dismissed the appeal by the appellants against the decision of the High Court and against part of the decision of the COA in
I dismissing notice of motion (encl. 19). The COA in Appeal 1556 had, *inter alia*, ordered that the respondents shall add Soo Teck Lee ('STL') and Lim Siew Kien ('LSK') as parties in the High Court's proceedings within 14 days

from 25 August 2021, *ie*, on or before 8 September 2021, failing which, the respondents' suit at the High Court shall 'stand as struck off' ('the first COA order'). In compliance with the first COA order, the respondents filed a joinder application together with an affidavit in support purportedly affirmed by Chua Yok Sin, before a Commissioner for Oaths ('CO'). However, the CO had stated that all the affidavits, including the impugned affidavit in support by Chua Yok Sin, were never signed and/or attested by either Chua Boon Hock or Chua Yok Sin before the said CO and that the CO never signed and/or placed his chop on the said affidavits, including, *inter alia,* the impugned affidavit in support. Before the High Court Judge ('HCJ'), the appellants raised a preliminary objection in that the respondents had filed, used and/or relied upon various impugned affidavits which were not affirmed before a CO and therefore were not valid affidavits throughout the various court proceedings for this case. In this regard, the appellants argued that the impugned affidavit in support by Chua Yok Sin could not be accepted and/or ought to be disregarded by the court. Consequentially, the result would be that the said joinder application was filed without a valid affidavit in support and must fail *in limine*. The HCJ struck out the joinder application in accordance with the first COA order as there was a failure to add STL and LSK within 14 days from 25 August 2021. However, the HCJ made the High Court consequential order ('HC consequential order') and directed that pending further directions from the COA in Appeal 1556, the respondents be granted the liberty to refile another joinder application to join STL and LSK as parties in the High Court suit. Aggrieved with the decision of the High Court, the appellants appealed to the COA against the HC consequential order *vide* Appeal 682 as well as filing a notice of motion (encl. 19) in Appeal 1556 at the COA to enforce the first COA order. The COA dismissed the appeal as well as the motion in encl. 19 in the High Court relating to Appeal 1556 and granted the said HC consequential order, which was now the subject matter of the appeal herein. The main issue for determination was whether in the first place, a High Court could disregard a COA order and whether the COA was *functus officio* and acted in excess of its jurisdiction when it granted the consequential order despite its previous order in Appeal 1556, as such an act would tantamount to revisiting or reopening the matter that had been perfected and finalised.

Held (allowing appeals)

Per Hasnah Mohammed Hashim FCJ delivering the judgment of the court:

(1) It is trite law that once an order/or judgment had been perfected, the court ought not to reopen or alter its effect unless it falls under the slip rule. In this appeal, the respondents filed the joinder application on 2 September 2021. However, the joinder application was not supported by a proper affidavit in support as it was not affirmed neither was it attested before the CO. Hence, the respondents breached the mandatory

requirements under the existing law to formally attest the said affidavit. There was no valid and legal attesting instrument in support thereof. (paras 15-17)

(2) The failure to attest the affidavit in support was fatal to the joinder application. That failure was neither curable nor remediable under O. 1A of the Rules of Court 2012 as the respondents intentionally disregarded the mandatory rules. The COA in Appeal 682 failed to take into consideration that the HCJ departed from the said COA order in Appeal 1556 by granting the consequential order and that the joinder application was flawed due to the absence of a valid affidavit in support. No reasons were given by the HCJ as to why the COA order of Appeal 1556 was not adhered to. If at all clarification was required, then Her Ladyship should have directed the parties to seek clarification at the COA before making any decision and/or granting any order. The sanctity of a court order must be respected and observed at all times, until it is validly set aside. (paras 18 & 19)

(3) The COA was plainly wrong in varying the COA order in Appeal 1556. The COA in Appeal 682 must take cognisance of the COA order in Appeal 1556 and not make any order inconsistent and/or contrary to it and more importantly there was no application for leave to appeal filed against that COA order in Appeal 1556. Thus, this court allowed the appeals and restored the first COA order in Appeal 1556. Since no proper application was made by the respondents at the High Court as ordered by the COA in Appeal 1556, the respondents' suit at the High Court was struck off. (paras 20-22)

Bahasa Melayu *Headnotes*

Ini adalah rayuan perayu terhadap keputusan Mahkamah Rayuan yang menolak rayuan perayu terhadap keputusan Mahkamah Tinggi dan terhadap sebahagian daripada keputusan Mahkamah Rayuan dalam menolak notis usul (lampiran 19). Mahkamah Rayuan dalam Rayuan 1556 telah, antara lain, memerintahkan bahawa responden hendaklah menambah Soo Teck Lee ('STL') dan Lim Siew Kien ('LSK') sebagai pihak dalam prosiding Mahkamah Tinggi dalam tempoh 14 hari dari 25 Ogos 2021 iaitu pada atau sebelum 8 September 2021, jika gagal, guaman responden di Mahkamah Tinggi hendaklah 'dibatalkan' ('perintah Mahkamah Rayuan pertama'). Selaras dengan perintah Mahkamah Rayuan pertama, responden memfailkan permohonan percantuman bersama afidavit sokongan yang kononnya disahkan oleh Chua Yok Sin, di hadapan Pesuruhjaya Sumpah ('PS'). Walau bagaimanapun, PS telah menyatakan bahawa segala afidavit, termasuk afidavit sokongan yang disangkal Chua Yok Sin, tidak pernah ditandatangani dan/atau disahkan oleh Chua Boon Hock atau Chua Yok Sin di hadapan PS tersebut dan bahawa PS tidak pernah menandatangani dan/atau meletakkan

copnya pada afidavit tersebut, termasuk antara lain, afidavit sokongan yang disangkal. Di hadapan Hakim Mahkamah Tinggi, perayu membangkitkan bantahan awal kerana responden telah memfailkan, menggunakan dan/atau bergantung pada pelbagai afidavit yang disangkal yang tidak disahkan di hadapan PS dan oleh itu afidavit-afidavit tidak sah sepanjang prosiding mahkamah untuk kes ini. Dalam hal ini, perayu-perayu berhujah bahawa afidavit sokongan yang disangkal Chua Yok Sin tidak boleh diterima dan/atau patut diabaikan oleh mahkamah. Akibatnya, permohonan percantuman tersebut telah difailkan tanpa afidavit sokongan yang sah dan mesti gagal *in limine*. Hakim Mahkamah Tinggi membatalkan permohonan percantuman mengikut perintah Mahkamah Rayuan pertama kerana terdapat kegagalan untuk menambah STL dan LSK dalam tempoh 14 hari mulai 25 Ogos 2021. Walau bagaimanapun, Hakim Mahkamah Tinggi membuat perintah berbangkit Mahkamah Tinggi ('perintah berbangkit Mahkamah Tinggi') dan mengarahkan bahawa sementara menunggu arahan lanjut daripada Mahkamah Rayuan dalam Rayuan 1556, responden diberi kebebasan untuk memfailkan semula permohonan percantuman lain untuk menambah STL dan LSK sebagai pihak dalam guaman Mahkamah Tinggi. Terkilan dengan keputusan Mahkamah Tinggi, perayu merayu kepada Mahkamah Rayuan terhadap perintah berbangkit Mahkamah Tinggi melalui Rayuan 682 serta memfailkan notis usul (termasuk lampiran 19) dalam Rayuan 1556 di Mahkamah Rayuan untuk menguatkuasakan perintah Mahkamah Rayuan yang pertama. Mahkamah Rayuan menolak rayuan serta usul dalam lampiran 19 di Mahkamah Tinggi berkaitan Rayuan 1556 dan memberikan perintah berbangkit Mahkamah Tinggi tersebut, yang kini menjadi perkara rayuan di sini. Isu utama untuk ditentukan ialah sama ada pada mulanya, Mahkamah Tinggi boleh mengabaikan perintah Mahkamah Rayuan dan sama ada Mahkamah Rayuan adalah *functus officio* dan telah bertindak melebihi bidang kuasanya apabila memberikan perintah berbangkit walaupun terdapat perintahnya sebelum ini dalam Rayuan 1556, kerana tindakan sedemikian akan sama dengan menyemak semula atau membuka semula perkara yang telah disempurnakan dan dimuktamadkan.

Diputuskan (membenarkan rayuan-rayuan)
Oleh Hasnah Mohammed Hashim HMP menyampaikan penghakiman mahkamah:

(1) Adalah menjadi undang-undang matan bahawa sebaik sahaja perintah/atau penghakiman telah disempurnakan, mahkamah tidak sepatutnya membuka semula atau mengubah kesannya melainkan itu terangkum dalam 'slip rule'. Dalam rayuan ini, responden memfailkan permohonan percantuman pada 2 September 2021. Walau bagaimanapun, permohonan percantuman itu tidak disokong oleh afidavit sokongan yang sewajarnya kerana itu tidak disahkan dan tidak juga diperakui di hadapan PS. Oleh itu, responden melanggar keperluan mandatori

undang-undang sedia ada untuk mengesahkan afidavit tersebut secara rasmi. Tiada instrumen pengesahan yang sah dan mengikut undang-undang untuk menyokongnya.

(2) Kegagalan untuk mengesahkan afidavit sokongan telah memudaratkan permohonan percantuman. Kegagalan itu tidak boleh diremedi dan tidak boleh diperbaiki bawah A. 1A Kaedah-Kaedah Mahkamah 2012 kerana responden sengaja mengabaikan peraturan mandatori. Mahkamah Rayuan dalam Rayuan 682 gagal untuk mengambil kira bahawa Hakim Mahkamah Tinggi menyimpang daripada perintah Mahkamah Rayuan tersebut dalam Rayuan 1556 dengan memberikan perintah berbangkit dan bahawa permohonan percantuman adalah cacat kerana ketiadaan afidavit sokongan yang sah. Tiada alasan diberikan oleh Hakim Mahkamah Tinggi mengapa perintah Mahkamah Rayuan dalam Rayuan 1556 tidak dipatuhi. Sekiranya penjelasan diperlukan, pihak-pihak sepatutnya diarahkan untuk mendapatkan penjelasan di Mahkamah Rayuan sebelum membuat keputusan dan/atau memberikan perintah. Kesucian perintah mahkamah mesti dihormati dan dipatuhi pada setiap masa, sehingga perintah itu diketepikan secara sah.

(3) Mahkamah Rayuan jelas salah dalam mengubah perintah Mahkamah Rayuan dalam Rayuan 1556. Mahkamah Rayuan dalam Rayuan 682 mesti mengambil tahu tentang perintah Mahkamah Rayuan dalam Rayuan 1556 dan tidak membuat perintah yang tidak konsisten dan/atau bertentangan dengannya dan yang lebih penting tiada permohonan untuk kebenaran merayu yang difailkan terhadap perintah Mahkamah Rayuan tersebut dalam Rayuan 1556. Oleh itu, mahkamah ini membenarkan rayuan dan memulihkan perintah Mahkamah Rayuan pertama dalam Rayuan 1556. Memandangkan tiada permohonan sewajarnya dibuat oleh responden di Mahkamah Tinggi seperti yang diperintahkan oleh Mahkamah Rayuan dalam Rayuan 1556, guaman responden di Mahkamah Tinggi telah dibatalkan.

Case(s) referred to:
Hock Hua Bank Bhd v. Sahari Murid [1980] CLJU 92; [1980] 1 LNS 92 FC ***(refd)***
Syed Omar Syed Mohamed v. Perbadanan Nasional Bhd [2012] 9 CLJ 557 FC ***(refd)***

Legislation referred to:
Rules of Court 2012, O. 1A
Rules of the Court of Appeal 1994, rr. 1A, 93

For the appellant - Justin Voon & Caroline Lim; M/s Justin Voon Chooi & Wing
For the respondents - Lim Kien Huat & Bryan Ching Tze Yeo; M/s Lee & Lim

[Editor's note: For the Court of Appeal judgment, please see Yap Kim Hin & Anor v. Chua Boon Hock & Ors & Another Appeal [2023] CLJU 2508; [2023] 1 LNS 2508 (overruled); For the High Court judgment, please see Chua Boon Hock & Yang Lain lwn. Yap Kim Hin & Satu Lagi [2022] 8 CLJ 426 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Hasnah Mohammed Hashim FCJ:

[1] These are the appeals by the appellants against the decision of the Court of Appeal (COA) which dismissed the appeal by the appellants against the decision of the High Court made on 28 March 2022 and against part of the decision of the COA in dismissing notice of motion dated 6 April 2022 (encl. 19). We heard oral submissions by all learned counsel representing the respective parties, and at the end of those submissions we allowed the appeals. These are our reasons as to why we had so decided.

[2] On 23 August 2023, leave to appeal was granted to the appellants on the following questions of law (QOL):

(i) Whether the Court of Appeal in Civil Appeal: W-02(IM)(NCvC)-1556-10/2020 has on 25.8.2021 who had ordered consequentially that "Perintah Mahkamah Tinggi bertarikh 7.10.2020 dipinda ('varied') di mana pihak Responden-Responden/Plaintif-Plaintif adalah dikehendaki untuk menambah Soo Teck Lee (No. K/P: 680107-10-6035) dan Lim Siew Kien (No. K/P: 650930-10-6050), samaada sebagai plaintif-plaintif ataupun defendan-defendan, dalam prosiding Mahkamah Tinggi ini dalam tempoh 14 hari dari tarikh Perintah ini, dan jika Responden-Responden/Plaintif-Plaintif gagal berbuat demikian, tindakan Responden-Responden/Plaintif-Plaintif di Mahkamah Tinggi akan dibatalkan ('shall stand as struck off')" ("the said COA Order") becomes *funtus officio* after granting the said COA Order and is therefore not entitled and/or does not have the jurisdiction to give the said COA Consequential Order?

(ii) Whether the High Court can give an order that "Notis Permohonan bertarikh 2.9.2021 (Lampiran 75) adalah dibatalkan tanpa perintah terhadap kos dan dengan kebebasan untuk memfail semula tertakluk kepada arahan yang diperolehi oleh Plaintif-Plaintif daripada Mahkamah Rayuan dalam Rayuan Sivil No.: W-02(IM)(NCvC)-1556-10-2020 berkenaan garis masa yang diberikan oleh Mahkamah Rayuan untuk memfailkan permohonan untuk menambah Soo Teck Lee (No. K/P: 680107-10-6035) dan Lim Siew Kien (No. K/P: 650930-10-6050) sebagai pihak-pihak dalam prosiding Mahkamah Tinggi ini, iaitu dalam tempoh 14 hari dari tarikh Perintah Mahkamah Rayuan bertarikh 25/8/2021" ("the said HC Consequential Order") when it is contrary and/or inconsistent with the said COA Order?

(iii) Whether any "liberty to file afresh" ("kebebasan untuk memfail semula") granted by the High Court to the Respondents is contrary to the said COA Order?

(iv) Whether the Respondents (who did not file any appeal and/or notice of motion) can benefit from the Motion (Enclosure 19) filed by the Appellants in the Court Appeal below and obtain a consequential order *ie*, the said COA Consequential Order from the Court of Appeal?

[3] The facts in these appeals are straightforward and not complicated. They are mainly undisputed. However, having said that, it is necessary to set out the material facts to appreciate the issues argued in these appeals. The COA in Civil Appeal No. W-02(IM)(NCvC)-1556-10-2020 (Appeal 1556) had, *inter alia,* ordered that the respondents shall add Soo Teck Lee (STL) and Lim Siew Kien (LSK) as parties in the High Court's proceedings within 14 days from 25 August 2021, *ie*, on or before 8 September 2021, failing which, the respondents' suit at the High Court shall "stand as struck off" (the first COA order).

[4] In compliance with the first COA order, the respondents filed a joinder application dated 2 September 2021 (encl. 75 in the High Court) together with an affidavit in support purportedly affirmed by one Chua Yok Sin, *ie*, the second respondent before a Commissioner for Oaths, YM Tengku Fariddudin bin Tengku Sulaiman (CO) on 2 September 2021. However, the CO had through his solicitors' letter dated 11 September 2021 stated that all the affidavits, including the impugned affidavit in support by Chua Yok Sin were never signed and/or attested by either Chua Boon Hock or Chua Yok Sin before the said CO and that the CO never signed and/or placed his chop on the said affidavits, including, *inter alia,* the impugned affidavit in support.

[5] Before the High Court Judge, the appellants raised a preliminary objection in that the respondents had filed, used and/or relied upon various impugned affidavits which were not affirmed before a Commissioner for Oaths and therefore are not valid affidavits throughout the various court proceedings for this case. In this regard therefore, learned counsel for the appellants had argued that the impugned affidavit in support by Chua Yok Sin cannot be accepted and/or ought to be disregarded by the court. Consequentially, the result would be that the said joinder application was filed without a valid affidavit in support and must fall *in limine*.

[6] The learned High Court Judge on 28 March 2022 struck out the joinder application in accordance with the first COA order as there was a failure to add STL and LSK within 14 days from 25 August 2021. However, the learned High Court Judge made the said HC consequential order and directed that pending further directions from the COA in Appeal 1556, the respondents be granted the liberty to refile another joinder application to join STL and LSK as parties in the High Court suit.

[7] Aggrieved with the decision of the High Court the appellants appealed to the COA against the High Court consequential order *vide* the Court of Appeal No: W-02(IM)(NCvC)-682-04-2022 (Appeal 682) as well as filing a notice of motion (encl. 19) in Appeal 1556 at the COA to enforce the first COA order.

[8] The COA dismissed the appeal as well as the motion in encl. 19 in the High Court relating to Appeal 1556 with costs of RM5,000 and granted the said COA consequential order, which now is the subject matter of the appeal before us.

[9] Learned counsel for appellants argued that the learned High Court Judge departed from the terms of the said COA order and hence, erred in making the said HC consequential order. The respondents had not appealed against the said High Court order which struck out their said joinder application.

[10] The main issue for determination before us is rather straightforward, namely whether in the first place a High Court can disregard a COA order and whether the COA is *functus officio* and acted in excess of its jurisdiction when it granted the consequential order despite its previous order in Appeal 1556. Such an act would be tantamount to revisiting or reopening the matter that has been perfected and finalised.

[11] Learned counsel for the appellants submitted that the COA failed to appreciate the fact that learned High Court Judge ought to have enforced the said COA order and not made any further consequential order that would have the effect of contradicting it. It is also the submission of the learned counsel for the appellants that the COA in Appeal 682 involving the same issues failed to appreciate that the High Court Judge did not comply with the explicit COA order in Appeal 1556 and by doing so the High Court Judge had erred in principle by further granting the consequential order. Instead of applying and/or invoking the first COA order in Appeal 1556, the High Court referred the matter to the COA for clarification.

[12] The COA in Appeal 682 failed to appreciate that the first COA order is similar to a strict pre-emptory order and/or unless order in that if the said first COA order in Appeal 1556 is not complied with by the respondents within 14 days as ordered, the whole action at the High Court shall stand as struck off immediately and/or without any extension of time. By rejecting the appellants' appeal against part of the High Court's decision, namely the said HC consequential order given on 28 March 2022, the COA departed from the relevant terms in the said COA order in Appeal 1556.

[13] Learned counsel for the appellants further argued that the COA erred in exercising its purported discretionary power under rr. 1A and/or 93 of the Rules of the Court of Appeal 1994 (RCA 1994) to extend the 14 days period for compliance of the said COA order in Appeal 1556. Furthermore, no leave to appeal had been filed against the said COA order in Appeal 1556 to the Federal Court. There is also no application for extension of time filed by the respondents to comply with the said COA order in Appeal 1556. Therefore, the said COA order in Appeal 1556 remains valid and enforceable.

Analysis And Decision

[14] It was submitted that the said COA consequential order, in essence, has the effect of granting an extension of time to the respondents through the "backdoor" thereby enabling the respondents who had deliberately failed to comply with the said COA order in Appeal 1556. As highlighted there was no formal application for an extension of time being made by the respondents when the appellants raised the issue of breach or non-compliance of the said COA order in Appeal 1556. The "liberty to file afresh" granted by the High Court was also against the said COA order in Appeal 1556, as the order by the COA clearly stipulates that the failure by the respondents to comply will result in the High Court suit being struck off.

[15] It is trite law that once an order and/or judgment has been perfected the court ought not to reopen or alter its effect unless it falls under the slip rule. Chang Min Tat FJ explained in *Hock Hua Bank Bhd v. Sahari Murid* [1980] CLJU 92; [1980] 1 LNS 92; [1981] 1 MLJ 143 that:

> Clearly the court has no power under any application in the same action to alter vary or set aside a judgment regularly obtained after it has been entered or an order after it is drawn up, except under the slip rule in Order 28 rule 11 Rules of the Supreme Court 1957 (Order 20 rule 11 Rules of the High Court 1980) so far as is necessary to correct errors in expressing the intention of the court: *Re St Nazaire Co* 12 Ch D 88, *Kelsey v. Doune* [1912] 2 KB 482; *Hession v. Jones* [1914] 2 KB 421, unless it is a judgment by default or made in the absence of a party at the trial or hearing.

[16] In the Federal Court case of *Syed Omar Syed Mohamed v. Perbadanan Nasional Bhd* [2012] 9 CLJ 557; [2013] 1 MLJ 461 at p. 573 (CLJ); p. 473 (MLJ) the apex court explained the implications of failing to appeal against the decision of a judge:

> [20] We also find that the plaintiff did not appeal against the decision of the learned judge striking out the first suit. The failure to appeal meant that the plaintiff accepted the correctness of the decision to dismiss its suit ...

[17] In the appeal before us, the respondents filed the joinder application on 2 September 2021. However, the joinder application was not supported by a proper affidavit in support (encl. 76 at the High Court) as it was not affirmed neither was it attested before the CO on 2 September 2021. Hence, the respondents breached the mandatory requirements under the existing law to formally attest the said affidavit. In other words, there was no valid and legal attesting instrument filed in support thereof.

[18] The failure to attest the affidavit in support is fatal to the joinder application. That failure is neither curable nor remediable under O. 1A of the Rules of Court 2012 as the respondents intentionally disregarded the mandatory rules. The COA in Appeal 682 failed to take into consideration

that the High Court Judge departed from the said COA order in Appeal 1556 by granting the consequential order and that the joinder application was flawed due to the absence of a valid affidavit in support. No reasons were given by the High Court Judge as to why the COA order of Appeal 1556 was not adhered to. If at all clarification is required then Her Ladyship should have directed the parties to seek clarification at the COA before making any decision and/or granting any order.

[19] We agreed with the arguments advanced by learned counsel for the appellants that the sanctity of a court order must be respected and observed at all times, until it is validly set aside.

[20] With respect, the COA was plainly wrong in varying the COA order in Appeal 1556. The COA in Appeal 682 must take cognisance of the COA order in Appeal 1556 and not make any order inconsistent and/or contrary to it and more importantly there was no application for leave to appeal filed against that COA order in Appeal 1556.

[21] We, however, find no necessity to answer the QOL posed and hereby decline to answer the same, in the circumstances before us.

[22] Based on the aforementioned reasons and in light of the above settled principles we found merits in the issues raised by the appellants. Having carefully considered the submissions of all parties and for all the reasons aforesaid we allowed the appeals and restored the first COA order in Appeal 1556. Since no proper application was made by the respondents at the High Court as ordered by the COA in Appeal 1556, the respondents' suit at the High Court is struck off. We allowed the appeals with global costs of RM60,000 for both appeals to the appellants subject to allocatur fee. We set aside the decisions of the Court of Appeal and the High Court.